SUPPORTING BRIEF

THE OPINIONS OF THE COURTS BELOW

The opinions of the Court of First Instance of Manila and the Supreme Court of the Philippines are not yet reported.

STATEMENT OF THE CASE

A full statement of facts appears in the petition, and for the sake of brevity it is not repeated here.

SPECIFICATION OF ERRORS

The Supreme Court of the Philippines erred in not declaring that the respondents contracted a valid obligation by virtue of clause 2 of Exh. "J" in relation to clause 5 of said exhibit and that by transferring a part of their credits to the Archbishop of Manila and by ordering or acquiescing in the sale of the properties of the Mindoro Sugar by its trustees, without making satisfactory arrangements for the payment of the mortgage credit in the amount of $125,000.00, U. S. Cy., (₱250,000, Philippine Currency), they have committed a breach of contract and defrauded as well as damaged the Bank in the above indicated sum together with the interest and attorney's fees as provided in Exh. "B".

ARGUMENT

PRELIMINARY CONSIDERATIONS

The question herein involved reduces itself to the problem of how to interpret a contractual clause. This clause is paragraph No. 2 of Exh. "J" trans-

cribed on page 111 of the Transcript of Record.

The parties to this case attached to said clause two different and opposite senses and scopes. The respondents maintain that the clause creates an obligation on their part to make satisfactory arrangements for the payment of the second mortgage in the amount of $125,000.00, U. S. Cy., (₱250,000.00, Phil. Cy.), constituted in favor of the Bank, subject to two conditions, namely, first, that said defendants should purchase said properties from the Mindoro Sugar and, secondly, that afterwards they should sell or dispose of said properties to a third party. These two uncertain and future events constitute, in their opinion, two circumstances without which said clause could have no effect whatsoever, because the obligation therein created could not be juridically born until the said events have taken place. The decision of the respondent Supreme Court has endorsed said interpretation and adjudged it to be authentic and correct. And in view thereof, it has absolved the defendants from all liability.

In opposition to this interpretation, the Bank contends that the true intention of the parties in stating that the defendants herein acknowledged its second mortgage and that in the event of a sale were bound to make satisfactory arrangements with the purchaser for the payment of such mortgage credit, was not the creation of an obligation subject to a suspensive condition, but the creation of one subject to a period or term whose date or mode of payment was not fixed.

I

The interpretation accepted by the decision appealed from is absurd.

The interpretation given by the defendants to the clause in question is absurd, not only from the juridical, but also from the purely rational and logical point of view.

It is a rule of common sense expressly confirmed by Art. 1285* of the Civil Code of the Philippines, that the clauses of a contract should not be interpreted separately, but should be construed as parts of a harmonious whole or unity, which is the contract.

As this Hon. Court has well said in the case of *Green County v. Quinlan, 211 U. S. 582, 53 L. ed. 335, 341*:

"In ascertaining the true meaning of instruments in writing, courts do not confine their attention to single words, phrases, or sentences. The meaning is sought from the whole instrument, viewed in the light of the subject with which it deals. This general rule of interpretation often makes it manifest that that which is called a condition is really but a covenant or agreement, to be performed independently of the counter obligation with which it is associated. When such an intent is discovered

* "Art. 1285. The stipulations of a contract should be interpreted in relation to one another, and those that are doubtful given the meaning which may appear from a consideration of all of them together."—*Civil Code of the Philippines.*

the courts have no difficulty in giving it effect, though the result be to disregard the technical meaning of the word 'condition.' Stanley v. Colt, 5 Wall. 119, 18 L. ed. 502; Sohier v. Trinity Church, 109 Mass. 1; Episcopal City Mission v. Appleton, 117 Mass. 326; Cassidy v. Mason, 171 Mass. 507, 50 N.E. 1027; Clapp v. Wilder, 176 Mass. 332, 50 L. R.A. 120, 57 N.E. 692; Post v. Weil, 115 N.Y. 361, 5 L.R.A. 422, 12 Am. St. Rep. 809, 22 N.E. 145; Clark v. Martin, 49 Pa. 289; Watrous v. Allen, 57 Mich. 362, 58 Am. Rep. 363, 24 N.W. 104; Scovill v. McMahon, 62 Conn. 378, 21 L.R.A. 58, 36 Am. St. Rep. 350, 26 Atl. 479; Hartung v. Witte, 59 Wis. 285, 18 N.W. 175."

See also Boardman v. Reed, 6 Pet. 328, 8 L. ed. 415; Randon v. Toby, 11 How. 493, 13 L. ed. 784; Neilson v. Ragow, 12 How. 98, 13 L. ed. 909; Black v. U. S., 91 U.S. 267, 23 L. ed. 324; O'-Brien v. Miller, 168 U.S. 287, 42 L. ed. 469.

The decision of the respondent Supreme Court has not complied with this universally accepted rule of legal hermeneutics, for, it infers the intention of the parties from the words contained in the clause in question, considered separately from the rest of the contract.

As is readily seen, the phrases employed by the parties were neither felicitous nor accurate. Viewed by themselves and separately from the rest of the contract, these phrases may give rise to a great deal of confusion and doubt. But taken in relation to the other clauses of the contract, and studied in the light of the circumstances under which the contract was entered into, the true intention of the parties appears as clear as day.

As the letter of the contract itself (Exh. "J", Record pages 110-113) shows, the parties thereto had two distinct and concrete ends in view. The first was to provide for and satisfy the desire of the Bank to relieve itself of the duty to finance the Mindoro Sugar (which it was then financing jointly with the two defendants), and the second to solve the economic problem offered by the existence of the second mortgage in favor of the Bank which burdened the properties of the Mindoro Sugar for the sum of $125,000.00, U. S. Cy., (₱250,000.00 Phil. Cy.). This second mortgage had long been due and the Bank had instituted foreclosure proceedings against the properties of the Mindoro Sugar for the collection of the capital secured by said mortgage. The interest had in this case by the Philippine Trust, which was the trustee, and that of the Union Insurance, both of whom were holders of all the bonds of the Mindoro Sugar, is unquestionable. The foreclosure of the mortgage of the Bank was a danger to the rehabilitation plan of the Mindoro Sugar in which the respondents had pinned all their hopes. The respondents in order to avoid this danger, worked for and obtained control over the foreclosure of the mortgage of the Bank, in exchange for the security of the payment of the latter's credit at a certain, though indeterminate future time. (Exh. "B", pars. 2 and 5, Record pages 77 and 78). The close relationship existing between clauses 2 and 5 of Exh. "J" (one of which is the complement and the reciprocal *raison d'être* of the other) is such that, if one were absent, the other would have absolutely no consideration, object or meaning.

Separately considered, clause No. 2 of Exh. "J" gives the idea of a unilateral juridical transaction whereby the Philippine Trust and the Union Insurance gratuitously and graciously acknowledged the mortgage in favor of the Bank and acquired certain future "optional" obligations. Likewise, clause 5 of said "J", separately considered, gives the idea that the Bank alienated important rights without consideration or reason. It is only by correlating the two clauses that the juridical transaction contained in both is perfectly and clearly explained. It is a bilateral juridical transaction having a consideration and a subject-matter of its own.*

It should be noted here, although this may be a digression from the main argument, that, inasmuch as the 2nd and 5th clauses aforecited refer to a consideration, object and purpose, which are ideally and practically different from the purpose and object of the other clauses of the contract, they constitute a contract specifically different from another contained in the other clauses of the document, and it may, therefore, be affirmed that here are two contracts contained within the same document.

---

* "Art. 1261. There is no contract unless the following requisites exist: 1. The consent of the contracting parties; 2. A definite object which is the subject-matter of the contract; 3. A consideration for the obligation established."—*Civil Code of the Philippines.*

"Art. 1274. In onerous contracts the consideration as to each of the parties is the undertaking or the promise of a thing or service by the other party; in remuneratory contracts the consideration is the service or benefit for

It being evident that we are dealing with a juridical transaction which is bilateral and onerous, even if we prescind from its technical and legal aspect (acknowledging, as it is now universally acknowledged, that Derbourg was right in affirming that the essence of juridical contracts or transactions, under the law of property, is their essentially economic nature, that is, the fact that they represent values and transfers which may be appraised in terms of money) and view it in its exclusively economic aspect, common sense indicates that there must be in the mutual obligations of the contracting parties a sense of reciprocity, of correlation, of compensation, for this is generally the predominant intention in anyone who enters into a contract regarding his property. In the economic field this has always been the commonplace and current idea underlying contracts.

This is now a universally accepted doctrine invoked by the most distinguished authorities on Civil Law.

"The origin of an obligation is found in the lack of equilibrium constituted by the consolidation of two patrimonies caused by the voluntary and legal transfer of a valuable thing from one to another. Its essence consists in an absolute tendency towards the re-establishment of that broken equilibrium; that is, there is an enrichment produced in my patrimony which demands compensation on my part for the valuable thing which I have re-

---

which the remuneration is given; and in contracts of pure beneficence the consideration is the liberality of the benefactor.

ceived, as the result of which I become the debtor and the other the creditor."—*Pierre Louis Lucas, "Volonté et Cause".*

And Sanchez Roman, acknowledged by all Spanish authorities as the most scientific and the most famous among the commentators on the Civil Code in force in the Philippines, after inquiring into the real and logical basis of all contractual relations and rejecting several opinions on the matter, states the following:

"Reciprocity, mutuality, solidarity, in short, all those principles necessary to human co-existence, and due veracity in the promise made and accepted—therein lies the key to the solution of this problem. Undoubtedly, the foundation or cause of obligations is found in the limitation of the physical and moral nature of man, in the need for the aid of other men in the form of obligations which would permit him to accomplish all the ends of his destiny, by offering him means whereby to satisfy all the needs of his existence; his *modus vivendi* is the sphere within which this basis grows, and the law, by conditioning similar motives of truth, gives flexibility, consistency, security and demandability to those necessary human relations."—*4 Sanchez Roman, Derecho Civil, p. 9.*

"In a bilateral obligation, the creditor acts in the field of obligation with respect to the other terminus of the relation only in so far as said obligation is a condition of his right. When likewise applying and controlling by maens of his acts the opposite terminus of the relation, namely, the creditor, the debtor also acts only in so far as the reciprocal right of the creditor is, at the same time,

a condition of his obligation—that is to say, the quality of debtor and creditor, the right and obligation of each one are a condition of the obligation and the reciprocal mutual rights of a bilateral obligation.

"4. In order that an obligation be bilateral it is not enough that the mutual character of creditor and debtor of each other and vice versa should concur in each one of its two personal termini either by accident or by the simple superimposition of both qualities on the same person with respect to the other with whom the contractual obligation is maintained. It is absolutely necessary that both qualities be the reciprocal result of the bond constituting such relation and that the mutual quality of debtor and creditor be a condition of the corresponding quality to be found in the opposite personal terminus.

"5. Bilaterality in obligations consists, then, in perfect mutuality or reciprocity; the same persons mutually bound to each other, and each one not only having the reciprocal right corresponding to the respective contrary obligation, but giving each other this reciprocity of obligation, in such a way that one may not exist without the other and that each be a mutual condition of the other; that these bilateral obligations should have as a source the same cause of duty, the same bond, in short, no distinct relation.—*4 Sanchez Roman, Derecho Civil, pages 38-39.*

All these opinions do no nothing but to translate into technical language a common concept or idea which is, in turn, the expression of the real fact in the economic field. Nobody parts with any portion of his property, or acquires a voluntary obligation, unless

it is in the belief and certainty of some compensation. This theory represents the current form of procedure in economic transactions, and, hence, in case of doubt, the decision should have applied it in determining what was the intention of the parties in executing the aforecited clauses 2 and 5 of Exh. "J".

Pursuant to the doctrine and the principles aforecited, it must be presumed that in the obligations contracted by the Bank on the one hand in favor of the defendants, and those contracted by the latter with the former, there is an economic valuation of equality, weight and reciprocity.

"Business contracts must be construed with business sense, as they naturally would be understood by intelligent men of affairs."—*North German Llyod v. Guaranty Trust Co. 244 U. S. 12, 61 L. Ed. 960.*

"As a general rule in the interpretation of written instruments, the intention of the parties must control, such intention to be gathered from the words used according to their ordinary signification if they be clear and explicit, but if such words are ambiguos then resort may be had to such evidence, written or oral, as will disclose the circumstances attending the execution of the instrument and place the court in the situation in which the parties stood when they signed the writing to be interpreted."—*United States v. Choctaw National, 179 U. S., 294, 45 L. ed 291.*

"Where it appears that that which is called a condition in a written instrument is really but a

covenant or agreement, to be performed independently of the counter obligation with which it is associated, the courts have no difficulty in giving effect to such intent, though the result be to disregard the technical meaning of the word 'condition' "—*Green County v. Quinlan 211 U. S. 583, 53 L. ed. 335.*

"Where it is plain that a strict and literal construction of a contract does not convey the real meaning of the parties, such construction is not to be entertained."—*Serralles v. Esbri, 200 U. S. 103, 50 L. ed. 391.*

The Supreme Court of Spain in its decision of January 29, 1873 and February 6, 1883, very wisely held that:

"A contract can not be interpreted in such a way as to give one of the parties the exclusive benefit and leave all the prejudice to the other."

Let them be placed on an imaginary balance. By virtue of clause 5 the Bank, which is clearly entitled to foreclose the properties of the Mindoro Sugar and which has instituted the corresponding action therefor, relinquishes such right and action. More, it places them entirely at the disposal of the defendants, and, in reality, transfers them to the latter, inasmuch as pursuant to the terms of that clause they acquire the right either to have the Bank indefinitely suspend its action while they finance the Mindoro Sugar, or to have it, upon its request, resume the foreclosure proceedings and sell the properties of the Mindoro Sugar. It is, therefore, the convenience of the defendants, based naturally in the condition of the business of the Mindoro Sugar, which fixes the time when and

the manner in which the Bank is to collect its credit. The payment of the Bank's indebtedness is thus subject to their will, to a term or indeterminate period. And the Bank which knows at this time [because the respondents have the majority interest in the properties of the Mindoro Sugar valued at millions of pesos, (see Exhs. "B", "F", and Annex B of Ex. "Q") and because they entertain the certain hope of making good business by continuing to finance the Mindoro Sugar (Exh. "E")] that the collection of its mortgage credit would be more secure if it acquiesced in the desires of those who in reality have the control of the properties of the Mindoro Sugar, agrees to cooperate in financing the latter and places at the disposal of the respondents its mortgage credit. When it later has to separate itself from the enterprise it succeeds in making the respondents fulfill the promise which they have previously made of securing the payment of its credit at some future time which, though not fixed, is nevertheless certain to come.

The foregoing is an accurate appreciation of the mutual obligations contracted by the parties.

Is there reciprocity, a just and rational compensation on the part of the Bank in clause 2, as now interpreted by the defendants and the decision of the respondent Supreme Court? No.

At first glance, one can readily see the disproportion, the economic lack of balance which such interpretation entails. The Bank waived its credit and placed it at the disposal of the respondents and contributed in the financing of the Mindoro Sugar while it was able to do so. On the part of the Bank,

the contract was not only perfected, but consummated and thoroughly performed in accordance with the agreement. What did it obtain in exchange therefor? According to the respondents and the Courts *a quo*, absolutely nothing. A very remote hope, subject to two uncertain events, which depend absolutely upon the free will of the respondents, is all that the latter are willing to grant—in other words, nothing at all.

The future of the Mindoro Sugar admitted of but two solutions. One of them was the success of the business. In such case the Bank would not have needed at all the acknowledgment of its mortgage by the respondents. The security offered by such acknowledgment could only be of value in case the business of the Mindoro Sugar failed. This being so, it would have been utterly absurd for the Bank to believe, upon signing the contract, that the Philippine Trust and the Union Insurance would, in case the business failed, buy for themselves the properties of the Mindoro Sugar for the purpose of reselling them. This is so puerile, so far removed from anything conceivable, that, common sense rejects it as an absurdity from the eonomic point of view. It could not have been in the mind of either the Bank or the respondents, three juridical entities managed by persons of acknowledged technical ability.

On the other hand, in plaintiff's interpretation of clause 2, is found the just and economic mutuality of reciprocal obligations. The Bank acquires rights and securities which at some future time will compensate it for the rights which it now relinqhishes. It suspends the collection of its credit and waives its

action in favor of the respondents. The latter, hoping to salvage the eight-million-peso interest they have in the Mindoro Sugar, deem it legally just and economically prudent to secure the payment of the Bank's credit at some future time in exchange for the promise not to demand it at the present time. It is only thus that a balance of interests and rights exists, and a juridical and economic reciprocity obtained. It follows from the foregoing that the interpretation advanced by the respondents is absurd and that the rational one is that offered by the plaintiff.

II

The theory of option accepted by the decision of the Supreme Court, renders the contract a complete nullity.

According to the decision of the respondent Supreme Court, the obligation to acknowledge the mortgage of $125,000.00 U. S. Cy. (₱250,000.00 Phil. Cy.) and to make arrangements for its payment by the purchaser of the properties of the Mindoro Sugar constituted an obligation conditioned upon two acts, the execution of which was optional upon the respondents, namely, the purchase of the properties of the Mindoro Sugar by the respondents and their resale by the same. It states:

"It was optional for the defendants to acquire or not to acquire the properties of the Mindoro Sugar Company x x. Consequently, if the acquisition was optional, the sale was also necessarily optional, x x." (Record page 235-236).

The most cursory reflection on these statements of the decision aforecited will show that they em-

body the most powerful reason for legally rejecting the interpretation it finally adopted.

From the fact that the respondents had the option *to purchase or not to purchase* and *to sell or not to sell*, it can clearly be deduced that, in conformity with said interpretation, it could likewise be optional on the part of the respondents to fulfill or not the obligation contracted in clause 2 of Exh. "J". If that is the case, then the Bank not only practically, but also legally failed to acquire anything whatsoever in exchange for the obligations which it contracted and complied with. Arts. 1115 and 1256 of the Civil Code of the Philippines provide:

"ART. 1115. If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance, or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

"ART. 1256. The validity and fulfillment of contracts cannot be left to the will of one of the contracting parties."

In accordance with the foregoing articles, if the interpretation of the respondents is to be followed, the obligation and the clause would be null ond void, that is, totally non-existent. In his comments on these articles, Mucius Scaevola, referring to the principle from which Art. 1115 was copied and derived, namely, Art. 1274 of the French Code, states:

"Article 1174 of the French Code, whose literal terms are the following, clearly says so: 'Any obligation contracted subject to a potestative condition

on the part of the obligee, is null and void.' Pothier, interpreting this article, states that in order that the condition may be valid and so that it may suspend the obligation under which it has been contracted, it must not be destructive of the nature of the obligation; that a condition which makes the obligation depend upon the will of the obligee alone would produce such an effect, because obligations being a legal bond contracted on account of necessity and involving essentially the duty to give or to do something, there is nothing more contrary to their nature than to make them depend upon the exclusive will of him who has contracted it; and that, consequently, such condition does not suspend, but extinguishes the obligation which in this case lacks binding force".—*19 Scaevola, Civil Code, p. 652.*

"Said principle may be thus stated: The validity and fulfillment of a contract may not be left to the discretion of one of the contracting parties. 'Discretion' means free will and even whim; 'validity' signifies firmness, subsistence; and 'fulfillment" means execution, reality,—all of which elements may be thus expressed: 'The effectivity of a contract may not be placed at the mercy or the mere will of one of the parties'.

"Now then, when does this take place? When may a contract be deemed left to the will of one of the contracting parties? In which cases is this article applicable?

"The underlying idea of this principle, its essence, may be deemed universal in the sense that in one way or another it is found in the laws of some or all the people of a given era, because it is an element peculiar to contractual life. Every positive right

which admits the doctrine of contract, must apparently accept, whatever its terms may be, the substance of the rule contained in Article 1256 of our Code. For contract being a concurrence of two or more wills with respect to a certain thing, 'the agreement of several persons upon the expression of a common will, designed to regulate their rights", Article 1171 of the Civil Code of the Argentine Republic, it is clear that, granting said juridical concept, we must perforce conclude, whether the law says so or not, that it is not legal to leave the common agreement at the mercy of one of the interested parties."—*20 Scaevola, Civil Code, p. 510.*

"If it is readily known from the letter or the spirit of the contract, or from both, that the obligation must legally come, then there would be no question. But the problem arises when it is not known for certain whether the day will come or not, because it depends upon what the obligee does or desires. Then there is no juridical bond properly so-called, that is, a link tying together the creditor and debtor; the latter is, as it were, loose, a circumstance which negatives the existence of a contract. This is the peculiarity of Article 1256, its philosophy. If the obligation must be complied with whensoever or howsoever the debtor wishes, then, there is no discretion; if the compliance or non-compliance depends upon the power of the obligee, whether because the fact conditioning the contract is subject exclusively to his will and to no other element (See Comments on Article 1115), or whether because the fact does not as yet exist and his absolute will alone prevails thereon, then

there is discretion."—*20 Scaevola, Civil Code, pp. 518-519.*

Garcia Goyena, says the following:

"The reasons underlying this article (1156) are very clear in Roman Law: to be and not to be obliged are incompatible things.

"Digest Book XLV, tit. 1, Law 17—*Stipulatio non valet in rei promittendi arbitrium collata conditione.* A condition left to the will of the debtor-promissor is not valid."—*3 Goyena, Civil Code, p. 27.*

Other authors state the following:

"We already stated in the general part hereof our opinion on potestative conditions and those which are merely discretionary; but from the point of view of positive law there is no doubt that the Spanish legislator does not consider as bound a person who by his own will may unbind himself, or when the obligation depends upon his will. Really in such cases there is no contract."—*3 Valverde, Derecho Civil, p. 141.*

"Paragraph 1 of the same article contains the sound doctrine that when the fulfillment of a condition depends upon the exclusive will of the debtor, the conditional obligation becomes null and void, undoubtedly because the nature of the condition is in such case equivalent to the lack of an obligatory bond, inasmuch as the efficacy thereof is made to depend exclusively upon the will of the debtor; that is, that no obligation exists."—*4 Sanchez Roman, Derecho Civil, p. 132.*

The first part of Art. 1115, in so far as it de-

clares null and void an obligation subject to the condition depending exclusively upon the will of the debtor, is in conformity with the evident and simple reflection that otherwise, it would be tantamount to sanctioning illusory obligations or going against the principle of justice stated in article 1256 which provides that the validity and fulfillment of contracts may not be left to the will of one of the contracting parties." —*8 Manresa, Civil Code, p. 131.*

And, construing Art. 1115, the Supreme Court of Spain rejects as absurd every interpretation of a contract whereby compliance with an obligation is left to the will of one of the parties.

"The stipulation of duties depending upon the acquiescence of him who is bound to comply with them, is absolutely inadmissible in the interpretation of bilateral contracts."—*Decision of the Supreme Court of Spain, Feb. 27, 1912.*

There is no doubt that in accordance with the authorities and doctrines aforecited, clause 2 of Exh. "J", if given the interpretation upheld by the decision of the Supreme Court of the Philippines is null and void and the obligation therein contained, non-existent. That is to say, the result of such an interpretation would no longer be just an irksome disproportion within a bilateral contract; but rather, inasmuch as clause 2 is null and non-existent, only clause 5 would stand with all the obligations it imposes upon the Bank uncompensated by any on the part of the defendants. As matters now stand, this is the practical result of the tremendous error of law committed in the decision of the respondent Supreme Court.

The Bank tied up its hands and feet and placed

its right at the mercy of the respondents thereby losing all hope of collecting its credit at that time; and in exchange for the certainty of collecting it at some future time which was certain to come, it contributed funds, while the political conditions of the country so permitted, towards the rehabilitation of the Mindoro Sugar. And if, in spite of all this, the contention herein criticized should be finally upheld, inasmuch as the success or failure of collection depended upon certain facts which were entirely subject to the will of the other contracting parties, the Bank would not be able to collect its credit.

This would mean that, instead of a guarantee, that is, a right in favor of the Bank, clause 2 created a clever trick whose only object was the annulment of the Bank's right. This conclusion is rejected by the law itself, not only because it is antijuridical, but also because it is both illegal and immoral.

III

The petition of respondents praying that the Union Insurance be relieved of its obligation under Exh. "J" and the resolution of petitioner denying said petition show that all of them were aware that in Exh. "J" they had signed an obligatory contract.

On May 6, 1926, the Philippine Trust requested from the Bank the release of the Union Insurance from its obligation under the deed Exh. "J". (See Exh. "K", Record page 113).

If, according to the contention of the respondents,

those obligations were conditional, that is, non-existent until the event which constituted the conditions should occur, and said event was dependent upon their will; if in order that the obligation should arise it was necessary that they—either one or both —should decide to buy and sell the properties of Mindoro Sugar Co., why did the Union Insurance have to be released by the Bank from the obligation contracted by it? By simply ceasing to finance the Mindoro Sugar, without buying or selling anything, the obligation was, according to their contention, extinguished, instead of born.

It follows from this that when the respondents wanted the release of the Union Insurance from its obligation under Exh. "J", which includes Clause 2 in question, they were well aware that they had signed an obligatory contract, that is. that its meaning was quite different from the one which they now claim to attach thereto.

The Board of Directors of the Bank rejected the petition and advised that "it is the sense of the Board that we should insist on the terms of the existing agreement and should see to it that they strictly comply with its terms". (Exh. "K-2", Record page 121). This also indicates that the Bank believed the contract was obligatory.

Thus, therefore, both parties have shown, by their subsequent acts, that they were aware that Exh. "J" which they had signed, was obligatory.

IV

In the interpretation of contracts, if the words should seem contrary to the evident intention of the contracting parties, the latter should prevail

over the former, and if the intention should not be evident the doubt should be resolved in favor of a greater reciprocity of interests.

Article 1281 of the Civil Code of the Philippines provides:

"ART. 1281. If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties the literal sense of its wording shall be followed.

"If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail."

Commenting on this article, Manresa says:

"In principle, the law places the intention of the contracting parties, which is the life of the contract itself, upon the words, which constitute the body in which the former is contained, and so much so indeed, that if it is taken in its literal sense it is because, the terms being clear, it is presumed that in them is to be found the will of the contracting parties; in short, the words are worth something, not because of themselves, but because of what they say."—*8 Manresa, Civil Code, 804.*

The doctrine held by this Honorable Court on this point is exactly the same:

"Where it is plain that a strict and literal construction of a contract does not convey the real meaning of the parties, such construction is not to be entertained."— *Serralles v. Esbri, 200 U. S. 103, 50 L. ed. 391.*

The decision of the respondent Supreme Court itself clearly acknowledges that the literal text of

Clause 2 of Exh. "J" is not clear. Said clause in no way limits the guarantee to the contingent event of a purchase by the respondents for themselves of the properties of the Mindoro Sugar and their subsequent resale. An additional statement to that effect would have had to be inserted therein in order to justify said explanation. And the decision of the respondent Supreme Court gratuitously inserts such statement.

If the clause were read separately from the rest of the contract, the impression, upon reading the phrases "in the event of the sale of the properties of the Mindoro Sugar Co. by said parties", would be that the latter had, at the moment of executing the deed, the ability and the right to sell. And so they had. But it does not in any way give the impression that they were thinking of actually buying them. The quoted phrase gives rise to the idea that all the contracting parties thought—in accordance with what was the real truth—that the only ones who could have any right, interest and ability to sell the properties (excluding the Bank, as it was excluded by Clause 5) were the two respondents herein. What other persons, individual or juridical, could have that right, that interest and that ability to sell the properties of the Mindoro Sugar? No one; for the simple reason that only the three contracting parties had the right, either as bondholders or as the only creditors, to sell them or cause the sale thereof. And it was because of this that in consideration of the promise of the Bank not to exercise its right, the other two parties, as a just compensation, bound themselves, in case they should exercise their rights, to make satisfactory arrangements with the purchaser of the pro-

perties for the payment of the Bank's credit.

It is thus seen that even the words of Clause 2, when reasonably explained, confirm the interpretation given them by the Bank.

The subsequent facts corroborate what, at that moment, the Bank, as a contracting party, must have thought. As a matter of fact, the properties of the Mindoro Sugar were sold as a result of a voluntary disposition and with the acquiescence of the bondholders, namely, the respondents, who elected a trustee in order that the latter might, in turn, sell the property, as evidenced by the fact that *on the same date* of his election they announced the sale, and although the bonds had preference over the losses of the business, the respondents did not claim any preference of payment at all. But if, inspite of all the foregoing the intention of the parties should not be deemed evident, then the doubt should be resolved in favor of a greater reciprocity of interests. And this may only be achieved by rejecting the interpretation of respondents which provides for no reciprocity at all, and by accepting that of the petitioner herein, which entails all the reciprocity agreed upon between the parties ever since the beginning of the enterprise which said petitioner was induced to join for the rehabilitation of the Mindoro Sugar.

This conclusion is sustained by Article 1289 of the Civil Code of the Philippines, which reads as follows:

"ART. 1289. If it should be absolutely impossible to decide by the rules established by the preceding articles any doubts concerning the incidental

details of a gratuitous contract, they should be settled in such a way as to effect the least possible transmission of rights or interests. *When doubt arises in constructing onerous contracts, it shall be resolved in favor of the greatest reciprocity of interests.*"

V

The interpretation of the obscure terms of the clause in question should not favor the respondents, who are its authors.

Another rule of legal hermeneutics overlooked by the decision of the respondent Supreme Court is that contained in Art. 1288 of the Civil Code of the Philippines.

"ART. 1288. Obscure terms of a contract, shall not be so construed as to favor the part who occasioned the obscurity."

The execution of clause 2 is due entirely to the respondents. This may be gleaned from the narration of the circumstances preceding it.

They proposed said clause, as now written. The Bank limited itself to accepting it.

In Exh. "F", which is a letter signed by the Managers of the respondents proposing an arrangement to the Bank, the following paragraph appears:

"We will further recognize the mortgage of the Bank, and, if we should sell the properties of the Mindoro Sugar, we will see that the purchaser makes satisfactory arrangements for the payment of the mortgage of the Bank."

This paragraph is a literal counterpart—without the names of the contracting entities—of clause 2 of the document, Exh. "J". It is, therefore, logical that inasmuch as the language of the clause is obscure due to the fault of the respondents, the interpretation given it by the latter, who would benefit by such obscurity, should not prevail, but rather the contrary one.

"Doubtful expressions in contracts should be construed most strongly against the party who uses the language."—*Garrison v. United States, 7 Wall. 688, 19 L. ed. 277.*

"A party who takes an agreement prepared by another, and upon its faith incurs obligations or parts with his property, should have it construed favorably to himself."—*Noonan v. Bradley, 9 Wall. 394, 19 L. ed. 757.*

And the Honorable Supreme Court of the Philippines erred in not applying this doctrine repeatedly invoked by it.

"At all events, the most that can be said in favor of the central is that the contract is obscure with respect to this point. In such a case, this obscurity cannot be made to favor the party that caused it (Art. 1288 of the Civil Code), which is the central, as the party that, through its assistant manager Manuel Garcia, attorney, drew up the contract."—*Hijos de I. de la Rama vs. Betia, 54 Phil. 149, 155.*

"If, following the rule and the cases just cited, any ambiguity or obscurity in a contract must be construed against the party causing it, and inasmuch as it is the defendant-appellant who executed

the contract in question, and who is therefore responsible for the ambiguity respecting the rate of interest, said ambiguity must be construed against him."—*Rivero vs. Rabe, 54 Phil. 982, 986.*

"If this ambiguity be considered to exist, the proper construction to be given to this expression is determined by article 1288 of the Civil Code, wherein it is declared that the interpretation of obscure clauses in a contract shall not favor the party who caused the obscurity."—*Gov't of P. I., vs. Derham Brothers, 36 Phil. 960, 967.*

VI

In the light of the history of the clause in question, the sale of the properties, which was under the control of the respondents, fixes a term or period of compliance of the obligation.

Again overlooking a rule of legal hermeneutics, the decision of the respondent Supreme Court also erred in not having taken into consideration the principle embodied in Article 1282 of the Civil Code of the Philippines.

"ART. 1282. In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto."

Commenting on this article, Manresa says:

"The intention may be proved by every means and evidenced by different things and facts. This article 1282 does not limit the means of proof to contemporaneous and subsequent acts, inasmuch as the adverb *principally*, besides indicating the im-

portance of these data, justifies the possible influence of others. * * *."

"The law speaks of acts contemporaneous and subsequent to the execution of the contract, but does not in any way exclude thereby those immediately preceding the latter which are related thereto and at times preparatory therefor. To interpret these legal provisions thus would be to suppress for the purposes of the interpretation of contracts the history of the same, a thing which is indispensable in understanding any law; to uphold the absurdity that the claims of the parties do not serve to explain the agreement they have reached; to believe that a contract has been born extemporaneously, as if it had no period of generation or as if the latter were not significant, and to limit the meaning of 'contemporaneous' to an exact simultaneity, which is impossible due to the rapidity of time, the acts involved not being the contract itself which is executed by the same person. But with respect to this point no doubt should arise, it having been decided in our jurisprudence that when doubt arises regarding the meaning of a contract or when it is claimed that its scope and object are unknown, it is indispensable in order to determine them, to look into the preceding facts preparatory therefor the aggregate of circumstances which have accompanied it, the intention and object of the contracting parties and the subsequent acts of the latter related thereto. (Decisions of the Supreme Court of Spain, Jan. 20, 1871 and April 3, 1884)."—*8 Manresa, Codigo Civil, pp. 706, 706-7.*

As a matter of fact the foregoing comments of Manresa are really superfluous, for the acts of the contracting parties prior to the execution of the

contract are included as a part of the transaction itself in the word "contemporaneous" employed by the law.

Now then, to review the history of this contracts: It appears that on June 17, 1917, in a letter addressed to the Bank by the Vice-President of the Philippine Trust, Mr. W. D. Clifford (Exh. "F-1"), the latter agreed in principle to take charge of the mortgage credit of the said Bank and to pay the same within 5 or 6 years, a proposition which was to be immediately submitted to the corporation for approval. Accordingly, it was submitted to the directors, and the proposition contained in the prior letter did not at all seem bad to any one, and the only objection, was to the fact that no period or certain term for the payment would be fixed (Exh. "F"). Taking together the three documents (Exhibits "F-1", "F" and "J"), it will be seen that Exh. "F", which is the link or tie between "F-1" and "J", contains the plain intention of the defendants, namely that they bound themselves to guarantee and pay the mortgage credit of the Bank, but that they requested for a period without fixed date, during which they would finance the Mindoro Sugar, subject to the obligation that if the properties were sold they would make satisfactory arrangements with the purchaser thereof for the payment of the Bank's credit.

In accordance with the foregoing text of the contract, the parties had agreed upon a "term". This is the Bank's contention and the only logical and rational conclusion.

And lest it be urged that this "term" was subject to the discretion of the respondents simply be-

cause it had no fixed date, we hasten to point out that said term necessarily had to come, for one of the following reasons: either (1) because of the prosperity of the Mindoro Sugar due to its continued financing by the respondents in which case there would have been payment even without the need of a sale, or (2) because the respondents would cease financing the Mindoro Sugar and cause the sale of its properties, or (3) because, in the last analysis, the Court would fix the said term, in the last accordance with Article 1128 of the Civil Code of the Philippines, which provides:

"ART. 1128. In cases in which although no term has been fixed by the obligation it is to be inferred from its nature and circumstances that it was intended to grant the debtor time for its performance, the extent of the term shall be fixed by the court.

"The court shall also fix the duration of the term when it may have been left to the will of the debtor."

For this reason what we have said respecting "condition" in relation to Articles 1115 and 1256 of the Civil Code of the Philippines, is not applicable to a contractual "term".

"Another example: I will pay the amount received as a loan when I please, or on the date I please. At first glance, the impulse immediately arises to deny validity to such an agreement, because the obligation seems to be placed thereby at the will of the debtor, inasmuch as by leaving to his will the fixing of the date of effectivity, it would be indefinitely postponed. There are many serious reasons against such an opinion. The first is that what is left to the discretion of the debtor is really not the obliga-

tion, but the time of its fulfillment. The debtor binds himself to carry out his undertaking, thus giving rise to a juridical action, unlike the case wherein the latter remains subject to his own determination, as in the example: "I will pay if I please", or "If such is my will", wherein the agreement affects the essence of the obligation and the latter is left at mercy of the obligee. In one case, the obligation exist, it has already been created; in the other, the obligation, its birth and existence, is linked with the whim or caprice of him who should properly comply with it. The second reason is that there really is no such indetermination as to time, because as regards an obligation to be fulfilled during the life time of a person, the day of compliance would necessarily have to arrive, on the day of his death; this would have to be the maximum and fatal limit for the existence of the obligation and, from that moment, his heirs would become subject thereto, as a pure and simple obligation. And the third reason, which is no less convincing, is the non-existence of indetermination in the period of obligations under Spanish Civil Law; for, according to the second paragraph of article 1128, the Courts may fix the duration of the period when the latter has been left to the will of the debtor.

"If the time or duration of the contract is not within the purview of article 1256, the same is true of its term of extinction. This may be made subject to the will of one of the parties through express agreement, without thereby destroying the purity and the life of the stipulation. The same example of loan hereinbefore cited may be given: If I can return the amount when I please, it shall be within

my power to extinguish the contract, which does not affect in any way the validity and effect of the obligation. There may be, and in fact there actually are, lease contracts whose termination is left by stipulation to the will of either the lessor or lessee, and this does in no wise mean a vitiated agreement. Likewise, upon receiving an amount as a loan 'for such time as I please.' I contract the obligation of returning it, said return being equivalent to a fulfillment of the obligation. I may delay a long time, or I may not; when I bind myself to return it, which is a case different from that in which the delivery or non-delivery of the amount received remains subject to my will."—*20 Scaevola, Código Civil, pp. 516-517.*

The reciprocity and justice spoken of at the beginning of this argument may only be found in the fact that the parties had agreed upon a "term", which might be more or less long, according as the financing of the Mindoro Sugar proves useful or not, a fact not lying absolutely at the mercy of the respondents, for the payment of a credit, in exchange of which term the Bank assigned its right to immediate collection. And for this reason, the more carefully the contention of the defedant is examined, the more absurd and illegal does it appear; whereas the interpretation of the Bank becomes, upon closer scrutiny, more logical and more in accordance with law.

VII

Every contract should be interpreted in such a way as to make it effective.

The decision of the respondent Supreme Court

overlooks, among others, the rule of legal hermeneutics established in Article 1284 of the Civil Code of the Philippines:

"Article 1284. If any stipulation of a contract should be susceptible of different meanings, it shall be understood in the sense most adequate to give it effect."

It has already been seen that clause 2, when given the interpretation upheld by the decision of the respondent Supreme Court is rendered not only practically ineffectual but completely null, and the obligation therein contained thus becomes non-existent. But this result should be avoided whenever it is reasonably possible to do so.

"Every intendment is to be made against the construction of a contract under which it would operate as a snare."—*Utley v. Donaldson, 94 U. S. 29, 24 L. ed. 54.*

"Where a contract is open to two constructions, by one of which it would be lawful and the other unlawful, the former construction should be adopted." —*Hobbs v. McLean, 117 U. S. 567, 29 L. ed. 940.*

"The court should construe an instrument in cases of doubtful construction, ut res magis valeat, rather than annul it by fanciful criticism."—*Dundas v. Hitchcock, 12 How. 256, 13 L. ed. 978.*

"A construction which will render an instrument operative will be preferred over one which render it void, where the two are equally consistent with its language."—*Ewing v. Howard, 7 Wall. 499, 19 L. ed. 293.*

A Spanish commentator has well said:

"In Law 80 De Verborum Obligationibus of the Digest, there is found a classical text, from which the rule under consideration has been taken: *Quoties in stipulationibus ambigua oratio est, commodissimum est id aecipi, quo res, qua de agitur, in toto sit.* Whenever there is an ambiguous sentence in a stipulation it is advisable to interpret it in such a way as to render effective that of which it treats.

"It should be presumed", as Garcia Goyena says "that upon entering the contract the parties seriously and deliberately have, as an object, something effective and not something imaginary or impracticable.

"The fundamental rule of interpretation reduces itself to discovering the intention, and it should be presumed that when the parties bound themselves they had one"— *20 Scaevola, Codigo Civil pp. 846-847.*

The Supreme Court of Spain is of the same opinion:

"The interpretation of every contract should tend to avoid its inefficacy for its executing parties should rationally be presumed to have intended that it should be effective."—*Decision of the Supreme Court of Spain of March 10, 1920.*

What efficacy does or did clause 2 have for the Bank in whose favor it was executed, when interpreted as the decision of the respondent Supreme Court has? None.

On the other hand, the rational interpretation of the Bank, which compensates rights and obligations, benefits and risks—for it should be remembered that, according to the interpretation of the

respondents, all the benefits were for them and all the risks for the Bank— is completely in conformity with equity, reciprocity and the law requiring that all contractual obligations be given due effectiveness. It is the only interpretation by means of which clause 2 may be given effect.

VIII

The sale of the properties to the Archbishop by the trustees is the result of the work of the respondents, as bondholders, and at any rate, the consequence of their neglect and anticipated breach of contract.

An aforecited authority commenting on the rules of legal hermeneutics contained in the Civil Code of the Philippines has this to say:

"The work of a lawyer when interpreting contracts submitted for his consideration, is not that of the jurist who applies a rule to a known and proven fact, but that of the psychologist, who perceives in the words, in the acts and in any other preceding, contemporaneous or subsequent circumstance, a reflection of the spiritual impulse which brought the contract to life.

"And it is also the work of a logician, because the laws preceding the mental proceess of the contract, which vary according to the nature of the latter and the position of the actors, must necessarily be deduced from the known acts, thus running the risk of every inductive process when operating on fragile and moveable elements."—*20 Scaevola, Código Civil p. 824.*

Undoubtedly, one of the circumstances which

can most help in ascertaining accurately the intention of the parties, is the status and condition of the latter in relation to themselves and, above all, in relation to the juridical act involved.

From the exhibits presented by both parties the following facts may be gleaned:

That the Mindoro Sugar issued bonds in the amount of $1,500,000.00 dollars (₱3,000,000.00) in 1917; that the Philippine Trust was the trustee of the property of the Mindoro Sugar (Exh. "A") and furthermore, that it had guaranteed the payment of the bonds, (Exh. "D"); that in 1923 the Union Insurance were the holders of said bonds (Exh. "E"); that in 1929 the Philippine Trust was already the holder of bonds in the amount of $782,000.00 (₱1,564,000.00) and the Monte de Piedad bonds in the amount of $371,000.00 (₱742,000.00) (Exh. "F"); and that only the remaining $447,000.00 (₱894,000.00) continued to be held by the Union Insurance; that in 1922 the Philippine Trust took possession of the properties of the Mindoro Sugar and thenceforth managed the same for a brief period of time jointly with the Bank and the Union Insurance, later with the latter only, and still later, alone; finally that, apart from the bonds it held, the Philippine Trust succeeded in obtaining a credit against the Mindoro Sugar in the amount of ₱5,490,481.25 (Annex B of Exh. "Q").

What do the foregoing facts mean?

Simply this: that the naked truth hidden behind the juridical fiction of the Mindoro Sugar is that this was an economic entelechy, that the entity which in truth disposed of its properties, was the Philippine Trust; that it had neither economic free-

dom nor the ability to act *ex sponte sua* nor true liberty in the juridical sense, for the latter requires, as all true individual or collective liberty does, the basis of an economic possibility; that the Philippine Trust and the Union Insurance had entirely in their hands (not only because the former was a trustee with very ample powers but also because both were bondholders and creditors for enormous amounts) the economic and juridical life of the Mindoro Sugar and the power to dispose at will of the rights, actions and obligations of the latter. Indeed so powerless was the Mindoro Sugar that its personality was obscured, anulled, and nobody took it into account for the purpose of the most insignificant contract regarding its property. The respondents, and especially the Philippine Trust, were not only the trustee of the Mindoro Sugar, but also its owner and master, with the same power over the properties of said company as though they really belonged to them.

An impulse, sprung from a noble sense of strict justice, tends to swerve from the absurdity to which the fictions of *professional technicism* have heretofore led the administration of law by Courts of Justice and now vigorously calls for a return to the sound principles based on the joint foundation of common sense and truth, proclaiming as an urgent necessity a resort to what is known as the rational and humanistic interpretation of laws. The object of this new attempt is not judicial discretion, as this term was understood in olden times, for, on the contrary, it includes the greatest respect of the Judge for the law; what is here demanded is that the law should cease to be a fiction, for then, rather than a means whereby justice triumphs, it becomes a formula where-

by the law is rendered a mockery. It is against all fictions created under the protecting wing of the law and behind whose mask are hidden the most repulsive acts, that the voices of the world's most distinguished professors of law are now raised as being contrary to equity and justice.

The fiction of juridical persons with limited liability owes its existence to the joint lucubrations of jurists and economists. It is true that its appearance in the world of economics has given an impetus to the development of commercial and industrial enterprises, but it is no less true that underlying that fiction is the possible development of speculation, adventure and wholesale fraud in a form heretofore undreamt.

And just as the law (and the courts interpreting the same) should uphold said fiction only in so far as it is legal and beneficial to the majority, so also when it becomes an evil and a danger thereto it should point it out as just a mere fiction, it should face the naked truth and proceed equitably in accordance therewith.

There is before us in the present case an evident example of pure fiction.

As in the old marionette theatres, the same hand and the same will moves and controls from behind the stage curtain the various dolls which appear to speak by themselves in the diverse tones feinged by the same voice, thus eliciting in the innocent and amused public the sensation of a diversity of personalities, although at the bottom of that same public's heart lies always the realization of a certain unity

of person, force and will which animates the marionettes.

This is a clear case of juridical fiction.

In Exh. "J" the respondents speak of the *event of a sale by them of the properties of the Mindoro Sugar.* And for the contracting party who acted in good faith, on the date of the execution of the contract (Exh. "J") the respondents were everything in this adventure, that is, they were really the ones who could dispose of the properties of the Mindoro Sugar. Such a party did not think at that moment that another marionette moved by the same will might appear from behind the wings in order to substitute it; and it failed to fix the term of the clause in question, because it was certain that the properties could or would only be sold on the date and in the manner desired by the respondents and because it had, in its opinion, the absolute guarantee of collection.

But what happened then? The Philippine Trust on February 1, 1929 transferred to the Archbishop of Manila for the sum of one peso and other valuable considerations all its credits against the Mindoro Sugar (Exhs. "Q" and "A"). The other *valuable considerations* cover up the fiction. Nothing is in reality transferred from the Phillipine Trust to the Archbishop, because it is publicly known in the Philippines that their interest are identical.

And on April of the same year the Philippine Trust relinquished the trusteeship of the Mindoro Sugar; and on the same date the said Philippine Trust and the Monte de Piedad, two entities controlled by the Archbishop and *holders of the bonds,*

elected as trustee the Archbishop himself (Exh. "R") who accepted his position on the same date (Exh. "S").

And again *on the same date*, the Archbishop announced the sale of the properties (Exhs. "L-3," "L-4" and "L-5"). The sale was scheduled for May 1, 1929. The Bank filed a protest against the sale with the Archbishop and the respondents for having made no provision for the payment of its mortgage credit (Exhs. "L," "L-1" and "L-2").

It does not appear in the record why the sale was not carried out on the date announced.

On June 14, 1929, the Archbishop of Manila resigned as trustee and on that same day the *Philippine Trust and the Monte de Piedad* elected as trustees Messrs. Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph Stevenot and Fulgencio Borromeo (Exh. "T"), who accepted their position immediately (Exh. "U").

On August 26, 1929, the new trustees announced the sale once again without making provision for the payment of the Bank's credit (Exh. "W"). And on November 4, 1929 the auction was held in the office of the Justice of the Peace of San Jose, Mindoro, the property being adjudicated to the Archbishop of Manila for ₱3,000,000.00 (Exh. "V"), without the latter having paid any cash in the same act, according to the deed of sale itself (Exh. "V").

Leaving aside the former arguments (as any one of them alone is sufficient ground for rejecting the interpretation placed by the decision of the respondent Supreme Court on Clause 2 of Exh.

"J") and in view of the real truth underlying the fiction above pointed out, it may not be amiss to formulate the following questions:

Who sold the properties of the Mindoro Sugar? The answer is clear: nominally the trustees, but really the agents of the respondents sold the properties, in order that with a part of the credit of the Philippine Trust, their assignee may become the owner of all the properties of the said Mindoro Sugar.

This is so, not only because the Archbishop, the Monte de Piedad, and the Philippine Trust are one and the same real economic entity, although they hide behind three distinct juridical cloaks, but also because the first trustee elected by the respondents, namely, the Archbishop, on the same day of his appointment decided upon the sale of the properties, all of which presupposes a previous agreement, and because, although the Philippine Trust only received ₱1.00 and other valuable considerations, it did not even raise the question as to whether its bonds had legal preference over the rights which it had transferred to the Archbishop, * and lastly because the second trustee elected by them also immediately proceeded with the sale. All this indicates that the trustees were chosen by the respondents only for the purposes of carrying the sale into effect.

And who bought the property? The Archbishop, with the preferred crop loan advances of the Philippine Trust.

---

* The credit of ₱5,500,000.00, which the Philippine Trust transferred to the Archbishop of Manila is not a

And what did the agents of the respondents sell to the Archbishop?- The properties of the Mindoro Sugar. For although the Philippine Trust assigned its credits to him, inasmuch as the latter were on said date much greater than the value of the properties of the Mindoro Sugar, when it transferred to him said credits, it was *ipso facto* really transferring the properties themselves.

In view of all this, which sounds very much like a comedy, (and which would not have been necessary, unless the intention was to evade the payment to the Bank of the mortgage loan amounting to ₱250,000.00 guaranteed by clause 2 of Exh. "J") not only the law, but even the slightest sense of equity rejects the possibility that such fiction should triumph over the truth to the prejudice of a clear right belonging to the plaintiff.

The transfer by the Philippine Trust to the Archbishop of a big preferential credit (five million pesos, Philippine Currency), without the inclusion of an adequate clause for the protection of the Bank in the event of the realization of the

---

preferred claim as per Sections 2 and 12 of Article IV of the Deed of Trust (Exh. "A", Record pages 57 and 64). It can be gleaned from the cited sections of the aforesaid Deed of Trust that the losses which the trustee suffered in operating the Mindoro Sugar affairs, called "expenditures and advances," in Exhibit "Q-a", or crop loan advances in Exh. "K-1", and its interests are not preferred claims. The financing by the Philippine Trust was made by virtue of Exhs. "C", "J", and "K" (Record pages 80, 110, and 113). Upon the other hand, it would be absurd to interpret the Deed of Trust in such a way

impending sale, was clearly concocted for the only purpose of alleging, as it is now alleged, that it was not the respondents who sold the properties of the Mindoro Sugar and who thus left unprotected the credit of the Bank, which the latter had refused to assign to them for the sum of ₱13,000. But the fallacy of that argument is evident: 1. The trustee is only an agent or instrument of the respondents. 2. If the Archbishop was a creditor for the sum of five million pesos and was able to cause the sale of the properties in question in order to buy them at the auction, it was by virtue of an assignment and as the successor in interest of the Philippine Trust. 3. The unprotected condition of the Bank's credit is the result of respondents' neglect and abandonment.

It is useless to allege that the respondents could do nothing after the assignment of the five-million-and-a-half credit by the Philippine Trust to the Archbishop, firstly, because they were the ones entitled to elect a trustee, as holders of the great ma-

---

as to authorize the trustee to operate the Mindoro Sugar for years and years. It is reasonable to suppose, and in fact the Deed of Trust only permits that this operation be made in case of default or violation of the obligation of the Mindoro Sugar, and then, only upon petition of the holders of bonds amounting to 25% of all outstanding bonds and provided the properties covered by the Deed of Trust be preserved and sold for the payment of all the obligations of the Mindoro Sugar. Advances may be made for the preservation of the properties of the Mindoro Sugar or in order that its pending business may be continued to a successful end, as, for example,

jority of the bonds, and the ones who could well choose the person most likely to make good the promise made by them; and secondly, assuming that because of said assignment it was impossible for them to do anything for the Bank's credit, the act of rendering impossible the fulfillment of their obligation contracted by them is an anticipated breach thereof.

The respondents accepted the duty of seeing to it that the infant, namely, the Bank's second mortgage, should live. The fact that one of them relinquished, without reservations, the means whereby it could watch over the life of such infant, and the fact that both lay back idle, instead of lending a helping hand, when the infant's life was being threatened with a sale whose conditions did not include the protection of the Bank's mortgage credit, are not excused for their failure to comply with their duty. They are certainly not excuses, but, on the contrary, acts and omissions violative of the obligation they contracted.

---

the preservation and milling of the standing sugar crop. But no new capital could be invested for new crops, business, or enterprises such as the planting of a new crop, the buying of new equipments, etc., because these acts were alien to the duties of the trustee under the Deed of Trust. In fact, the Deed of Trust does not authorize the trustee to hold the properties of the Mindoro Sugar for years and years and in that manner to carry and operate new enterprises and later on charge the losses of the adventures as a preferred claim over and above the bonds issued under the Deed of Trust as well as the second mortgage in favor of the Bank.

"Our third conclusion is, that as the old Company totally abandoned the performance of its contract with the complainant by transferring all its assets and obligations to the new company, and as the contract is executory in its nature, the complainant had a right to consider it as determined by the act of the Company and to demand what was justly due to him in the exigency. Of this we think there can be no doubt. Where one party to an executory contract prevents the performance of it, or puts it out of his own power to perform and demand whatever damage he has sustained thereby. We had occasion to examine this subject in the recent case of U. S. v. Behan (ante, 168) to which we refer. It is unnecessary to discuss it further here."—*Lovell v. St. Louis Mut. Life Ins. Co., 111 U.S. 264, 28 L. ed. 423, text 426.*

See also U. S. v. Pick, 102 US 64, 26 L. ed. 46; Wareen v. Stodart, 105 US 224, 26 L. ed. 1117; U. S. v. Behan, 110 US 338, 28 L. ed 168; Roem v. Hurt, 178 US 1, 44 L. ed. 953.

PRAYER

WHEREFORE, it is respectfully prayed that this Honorable Court grant the foregoing petition for a writ of certiorari to review the decision of the Supreme Court of the Philippines and reverse the same, with instructions to grant the plaintiff the damages suffered by it in accordance with the measure provided for in Exh. "B", with costs.

RAMON DIOKNO
Attorney for the Petitioner
PNB Bldg., Escolta, Manila

I hereby certify that I have been served with three (3) copies of the Transcript of Record on May 21, 1940 and three (3) copies of this Petition and Supporting Brief, on May ——, 1940.

GIBBS & McDONOUGH
Counsel for Respondents.

By:

.....